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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ROBERT SIMS,
12 CDCR #F-64159,

13 Plaintiff,

14 vs.

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16 DEPARTMENT OF CORRECTIONS;
17 WASCO STATE PRISON; A. NAJERA,

18 Defendants.
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Civil No. 11cv3011 LAB (PCL)

**ORDER DISMISSING CIVIL
ACTION AS DUPLICATIVE
PURSUANT TO 28 U.S.C.
§ 1915A(b)(1)**

21 Plaintiff, a state inmate currently housed at Coalinga State Hospital located in Coalinga,
22 California and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C.
23 §1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead,
24 he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) [ECF No. 2].

25 **I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

26 The Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915A, obligates the Court to
27 review complaints filed by anyone “incarcerated or detained in any facility who is accused of,
28 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions

of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after docketing” and regardless of whether the prisoner prepays filing fees or moves to proceed IFP. *See* 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b); *Resnick v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

Plaintiff’s instant Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C. § 1915A(b)(1) because it appears to be duplicative of a case Plaintiff has already litigated. Plaintiff’s Complaint contains identical claims that are found in *Sims v. Giurbino, et al.*, E.D. Cal. Civil Case No. 09cv1850 GBC. A court “may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.” *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

A prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it “merely repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations omitted). Because Plaintiff has already litigated the same claims presented in the instant action in *Sims v. Giurbino, et al.*, E.D. Cal. Civil Case No. 09cv1850 GBC, the Court hereby **DISMISSES** Civil Case No. 11cv3011 LAB (PCL) pursuant to 28 U.S.C. § 1915A(b)(1). *See Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d at 446 n.1.

II. Conclusion and Order

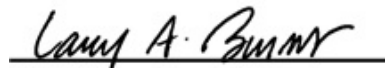
Good cause appearing, **IT IS HEREBY ORDERED** that:

Plaintiff’s Complaint in Civil Case No. 11cv3011 LAB (PCL) is **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915A(b)(1). Plaintiff’s Motion for Leave to Proceed IFP is **DENIED** as moot.

The Clerk shall close the file.

IT IS SO ORDERED.

DATED: February 23, 2012



HONORABLE LARRY ALAN BURNS
United States District Judge